83 - 1395

No. _____

In the Supreme Court of the United States

October Term, 1983

Alex Raineri, Petitioner

vs.

United States Department of Justice,
United States Parole Commission

Application for Writ of Habeas Corpus

Alex Raineri
Pro Se
502 6th Ave. N.
Hurley, Wisconsin 54534

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In the Supreme Court of the United States

Alex Raineri,
Petitioner,
v.
UNITED STATES DEPARTMENT OF JUSTICE, United States Parole Commission,
Respondent.

Civil Action
File No. ____

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

1. Petitioner is unlawfully restrained of his liberty and in custody of respondent, United States Parole Commission, Department of Justice, in violation of the constitution of the United States.

2. Respondent has custody of petitioner by virtue of the judgement and sentence of the District Court, Western District of Wisconsin in United States vs. Alex Raineri, case no. 80 Cr 29. Petitioner was found to be guilty on five felony counts, one, two and three as violations of the travel act, 18 USC 1952; perjury in violation of 18 USC 1623 and obstructing justice in violation of 18 USC 1503. Counts one, two and three were party to a crime. Petitioner was fined on counts one, two and three and sentenced to 18 month sentences on counts four and five, consecutively. Formal sentence was imposed on March 6, 1981 and stayed pending appeal to the Court of Appeals to April 27, 1982. A copy of the judgement and sentence is attached hereto.

3. Petitioner appealed to the Seventh Circuit Court of Appeals which affirmed the judgement of conviction on February 8, 1982. The opinion of the court is reported at 670 Fed 2d 602-1982. Certorari was taken to the United States Supreme Court and was denied.

4. This matter originated in the Court of Appeals as a

result of a motion for recusal made subsequent to the decision in the case. There are no other motions such as 28 USC 2255 on this issue in the District Court or the Court of Appeals.

5. Petitioner has exhausted any remedies available to him, and is therefore entitled to seek habeas corpus relief in this court.

5/ Petitioner is unlawfully restrained of his liberty, and in unlawful custody of the United States Parole Commission, respondent, in that petitioner's right to due process of law under the 5th amendment to the United States Constitution and the right to a fair and impartial tribunal was denied him when on appeal a biased and prejudiced justice presided and rendered a decision affirming conviction. As the attached affidavit demonstrates more fully, One of the Justices hearing the case on appeal and who wrote the decision had extra judicial contact with petitioner resulting personal animosity and threats to each other. The issue then being legislative and involving the locality and business implicated in the criminal charges involved in the petitioner's convictions.

In addition to the above, Justice Fairchild in his decision and due to bias and prejudice made findings of fact totally contrary to the evidence, in that:

a. Title 18 USC 1962 states that anyone who travels or uses an interstate facility and thereafter engages in or makes easier a criminal activity violates. In Count I of the indictment petitioner is charged with causing a check to travel interstate, not his own, on which a handwriting expert said the payee, a Utility Company's name, was in the petitioner's handwriting. The Utility customer and the Utility are in the same state but the bank was in an adjoining state to which state the check travelled for clearance only. The appeal decision found that the check paid for electricity that was used to light the building, cool drinks and operate a music box used by prostitutes who operated in the building. The variance between the

charge of travel first and criminal activity thereafter as required by section 1952 and the proof offered by the prosecution and findings of the decision conclusively show that the electricity came first and was used along with the criminal activity and then came the check to pay for THE ELECTRICITY. This theory of the crime having a fatal variance could not in any way support a conviction.

Count II has the same fatal variance as the charge is again a check travelling interstate to clear an out of state bank. This check was given for wages to a dancer who said she committed acts of prostitution in addition to her dancing. The check was paid again after the fact and then travelled to the bank thru a grocery store owner who had cashed the check in Wisconsin at his store for the dancer and then hastened to the bank to make sure he would be paid.

Count III also has the same variance between the charge in the indictment and the proofs at trial. The proof is that the linen used in the place of business was purchased locally and taken across state lines to be laundered. The indictment alleges that the linen service was an interstate facility. Again an after the fact crossing of state lines. The indictment alleges before the fact and proofs are after the fact.

The criminal activity is all before the interstate travel or use and none after the travel as required by the Federal Code 18 USC 1952.

Count IV is a perjury charge occurring before a grand jury. The period of time involved in the perjury relates to a time when the place of business was under new management. The proofs offered by the government demonstrated that the new owner had divorced himself and the business from all interstate activity such as the banking and linen service. Those services were the basis of federal jurisdiction in this indictment. As a result for the period in question we have undisputedly a purely

local business with not one scintilla any Federal nexus. This fact is admitted by all parties. This left the Grand Jury without any Federal jurisdiction. The appeals court decision found both jurisdiction and materiality existed for the Grand Jury to act.

Count V is an obstructing the witness charge. One of the elements of this crime is that the perpetrator must know that the person he seeks to coerce is a prospective witness to a judicial proceedings. The trial court when asked to rule on that particular element said it was immaterial and irrelevant to the charge. The trial court did not instruct the jury to find that petitioner knew he was obstructing a prospective witness as she held that element was not a part of the crime. The appeal decision found that the jury could infer from the evidence that petitioner knew that the person obstructed was a prospective witness when both the indictment and record a totally lacking such proof because the court said such proof was not necessary to convict. All elements of a crime are necessary to convict one of a crime.

The appeal court decision extends itself to a lengthy findings of fact how petitioner operated all facets of the showbar business. All of this in face of the fact that the showbar business records were burned in a fire. The findings could only be made from the testimony of a schizophrenic hallucinatory government witness who owned the showbar and was the principal to this offense. Further testimony came from a witness in jail on a 5 count felony heroin sale charge from which she was released and fined $25.00 on a misdemeanor. The witness was also granted immunity from state charges. In addition, to support these findings are the conclusions and opinions of the bookkeeper who testified to the records, two sets of books, skimming and excessive income. He further testified about daily records. None of which were in evidence.

The appeals court Judge who wrote the decision

created an anticipatory crime or act of misconduct on the part of the petitioner. The decision held that an inference could be drawn from a telephone conversation that the petitioner would have acted improperly as a judge if a case related to the phone call ever came before him as a judge. The phone call originally came from the government's chief witness who at the time said she was calling her building custodian. Present were two Wisconsin State police officers who listened to the phone conversation. Later, some 30 minutes, the custodian appeared at the site of the phone call and talked with the parties concerned. No question was then raised as to the custodian being the party to the phone call. About one and one half years later the chief witness changed her story and said the person called on the phone earlier was the petitioner and not the custodian and from a voice exemplar taken on tape recording the offices confirmed that the voice on the phone was not that of the custodian, but in fact was that of the petitioner.

The subject of the phone call was that the person called said to the Wisconsin police officers that "they were denying the owner of the place they were at her constitutional rights" and further "that they would not get anywhere with the judge of the county they were in who was the petitioner at the time." This conversation was described in the court of appeals decision as harrassing and intimidating and the basis for the inference that anticipatory misconduct was to be expected. The investigation resulted in no arrests or trials. This reasoning in the decision based upon innuendo and suspicion as to future conduct by a person is prejudicial pure and simple. It is on this type of prejudicial thinking that petitioners conviction was affirmed.

This same prejudice appears with the light bill where the record shows the power company record keeper stated there was no way that the interstate check that paid for

the power could be tied to any period of time for use of the power it paid for.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 United States Code, 2242. No other petitioner is involved in this petition.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Consitution, Amendments:

V. Nor shall any person...be deprived of life, liberty, or property, without due process of law....

VI. In all criminal prosecutions, the accused shall enjoy the right to a....trial, by an impartial jury of the State and district wherein the crime shall have been committed; and to be confronted with witnesses against him.

IV. Nor shall any state deprive any person of life, liberty or property, without due process of law; nor to deny any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

Title 28 United States Code, Sections 144 and 455 (a) and (b).

In Rice v. McKenzie (1978) 4th Circuit, 581 Fed 2d 1114 it stated "where disqualification is a denial of due process, Habeas Corpus is permitted."

In Nicodemus v. Chrysler Corp. 596 Fed 2d 152 it was held that "Statents of a Judge not supported by evidence shows prejudice."

In United States v. Sciuto 531 Fed 2d 842-1976 at page 845 it stated "We need not decide whether section 144 was irrevocably waived in the reply brief. The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause. It has long been recognized that the freedom of the tribunal from

bias or prejudice is an essential element of due process."

In SCA Services, Inc. vs. Morgan 557 F. 2d 110 (1977) it said Section 455 imposes no duty on the parties to seek disqualification, nor do they contain any time limits within which disqualification must be sought.

7. Petitioner has not heretofore applied for a writ of Habeas Corpus in this court.

WHEREFOR, petitioner prays this court issue a writ of Habeas Corpus commanding the United States Parole Commission, to produce the body of the petitioner before this court, at a time and place to be specified by this court, so that this court may further inquire into the lawfulness of respondents custody of petitioner; to discharge petitioner from respondent's custody; and to grant petitioner such other and further relief to which petitioner may be entitled to in this proceedings.

Dated This 16th day of December, 1983.

Respectfully,
/s/ Alex J. Raineri
Alex J. Raineri
pro se
502 6th Ave. N.
Hurley, Wisconsin 54534

State of Wisconsin
County of Iron ss

I, Alex J. Raineri, petitioner, being dully sworn under oath says the he has read the foregoing petition and subscribed thereto and that the information is true and correct.

/s/ Alex J. Raineri
Alex J. Raineri

subscribed and sworn to before me
this 16th day of Dec., 1983.

/s/ Robert C. Barto
Notary Public, Iron County, Wis.
My Commission expires: Dec. 1, 1985.
(seal)
Robert C. Barto
Notary Public
State of Wisconsin

APPENDIX

1. The record in this matter consists of the following documents:

a. Certificate of conviction
b. Letter of 7-6-82
c. Letter of 7-15-82
d. Letter of transmittal of first Recusal motion.
e. First Recusal motion and affidavit filed.
f. Court of Appeals' clerk's letter 7-6-83
g. Letter to Court of Appeals Clerk 7-9-83
h. Letter to Court of Appeals Clerk 7-29-83
i. Application for Writ of Mandamus.
j. Denial of application.
k. Second motion for recusal to the individual justice.
1. Reference to affidavit supporting motion for recusal.
m. Denial of recusal motion.

United States of America vs.

United States District Court

THE NORTHERN DISTRICT OF WISCONSIN

DEFENDANT: ALEX RAINERI

DOCKET NO. 80-CR-29

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH: March DAY: 6 YEAR: 198[illegible]

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL [illegible] (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~ verdict of { [ ] NOT GUILTY. Defendant is discharged; [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of Interstate transportation in aid of racketeering enterprises, False declarations before Grand Jury, Threatening a Grand Jury witness, all in violation of Title 18, U.S.C. §1952(a)(3); §1623, §1503.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

IT IS ORDERED that

With respect to Count I, defendant is fined the sum of $5,000.
With respect to Count II, defendant is fined the sum of $5,000.
With respect to Count III, defendant is fined the sum of $5,000.

On Count IV, defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one year, pursuant to Title 18, U.S.C. §4205(b)(2).

SPECIAL CONDITIONS OF PROBATION

On Count V, defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two years, pursuant to Title 18, U.S.C. §4205(b)(2).

IT IS FURTHER ORDERED that the terms of imprisonment imposed on Counts IV and V are to run consecutively.

IT IS ORDERED that defendant voluntarily surrender himself to the Attorney General or his authorized representative at such institution as may be ordered by the Court by further order entered prior to designated day and hour, pending the outcome of the appeal in this case. It is further ordered that bail is continued as set forth at sentencing, pending the outcome of the appeal.

IT IS FURTHER ORDERED that the fines imposed are payable within 6 months of the [illegible]

ADDITIONAL CONDITIONS OF PROBATION

[illegible] imposed above, it is hereby ordered that the general conditions of probation set out on the reverse [illegible] Court may change the conditions of probation, reduce or extend the period of probation, at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON THIS DATE 3/10/81

BY [signature] CLERK / DEPUTY

SIGNED BY [X] U.S. District Judge [ ] U.S. Magistrate: Barbara B. Crabb

Date: March 6, 1981

LINEHAN LAW OFFICES
OF MADISON
ATTORNEYS AT LAW

July 6, 1982

Honorable Justice Fairchild
VII Circuit Court of Appeal
Chicago, IL 60604

Re: United States of America v. Alex Raineri - Case No. 81-1394

Dear Justice Fairchild:

I represented Alex Raineri in the above referenced action, during which his conviction was affirmed. Subsequent to oral argument Mr. Raineri informed me that he felt you should have recused yourself from the appeal.

I am writing this letter directly to you, because I am unsure of the appropriate procedure and I would like you to feel absolutely free to provide me with any response deemed appropriate. I wrote to the Clerk earlier and was advised that they did not know of any formal standards for a recusal.

I have enclosed with this letter a copy of a "Motion to Vacate Judgment Affirming Conviction" which Alex has mailed me from prison.

By enclosing this motion I do not intend for it to be filed with the Court at this point in time, but simply to apprise you of Mr. Rainieri's position in this matter. I have also included Alex's affidavit.

I have written to Alex informing him of the fact that I mailed you his motion and affidavit, without filing it at the present time, to provide you with an opportunity to respond in any fashion you deem appropriate, if you

deem a response to be appropriate.
Respectfully,
/s/ Daniel W. Linehan
Daniel W. Linehan
vlh
c: Alex Raineri
Enclosure

UNITED STATES COURTS OF APPEALS
FOR THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

Chamber of
THOMAS FAIRCHILD
SENIOR CIRCUIT JUDGE

July 15, 1983

Mr. Daniel W. Linehan
Linehan Law Offices of Madison
105 West Doty Street
Madison, Wisconsin 53703

Re: No. 81-1394 (USA v. Alex Raineri)

Dear Mr. Linehan:

Thank you very much for your letter of July 6. You enclosed a copy of Judge Raineri's Motion to Vacate Judgment Affirming Conviction and a copy of his supporting affidavit. You indicate you do not intend the motion to be filed at present, and say that you are unsure of the appropriate procedure.

As to procedure, I do not recall any experience with a motion of this type, first made after denial of rehearing, and based on the claim that one of the judges on the panel was disqualified. I have known of motions claiming disqualification of a judge and filed before decision. In that situation, our usual practice is that the challenged judge passes on the sufficiency of the motion.

The present proposed motion, however, not only challenges my participation, but seeks vacation of a final judgment. Offhand, I would think the issue would be whether the judgment is void. If the motion were served

and filed, I would assume it would be referred to a panel of three judges. Surely the court's judgment could not be vacated by the order of one judge, acting alone. I do not venture to predict whether the panel would find the motion beyond the court's jurisdiction, or untimely, or would decide the motion on its merits. Because of this exchange of correspondence, at least, I would decline to serve on the panel.

Your sending me the papers informally does give me an opportunity to tell you that Judge Raineri's affidavit is factually wrong in all material respects. He evidently has confused me with someone else.

He relates heated confrontations he had in 1945 to 1947 with the Deputy Attorney General serving under Attorney General, late Chief Justice, John E. Martin. He asserts that I was the Deputy, and that these confrontations occured during consideration of an anti-gambling bill in the Wisconsin Legislature. As a matter of fact, I was not the Deputy Attorney General during that period or at any other time, although I served as Attorney General at a later period, November 1948, to January, 1951, succeeding Attorney General, later Chief Justice Broadfoot.

From 1941 until October, 1945, I was employed in Chicago and Milwaukee by the United States Office of Price Administration. Although Attorney General Martin once offered to appoint me an Assistant Attorney General, I did not accept, and was never Assistant nor staff-member. From October, 1945 until November, 1948 I was employed as an attorney by the Milwaukee firm of Miller, Mack & Fairchild. I was not involved in any way in the drafting or enactment of the anti-gambling bill referred to. Governor Goodland had died before I became Attorney General, and Governor Rennebohm was in office during my service.

Whoever may have had the confrontations with Judge Raineri described in his affidavit, it was not I. I do not recall any particular contacts I may have had later on

with Judge Raineri, but surely none were unpleasant.

Judge Raineri is also mistaken in asserting that I was appointed a District Judge before being appointed to the federal Court of Appeals. In fact, my only previous judicial position was as Justice of the Supreme Court of Wisconsin, to which I was elected in 1956 and 1966, serving from January, 1957 until I came to this court in August, 1966.

I enclose an extra copy of this letter which you may forward to Judge Raineri for his information.

Sincerely,

/s/ Thomas E. Fairchild
Thomas E. Fairchild
Enclosure
As Stated

Clerk of Court of Appeals
Seventh Circuit
Chicago, Illinois

Re: U.S. vs. Alex J. Raineri
No. 81-1394

Dear Sir:

Enclosed for filing please find original and three copies of motion and affidavit supporting same.

Also enclosed please find blank check payable to you as clerk and if you will please fill in the amount of the filing fee.

I request permission to file a brief on the issues involved such as timeliness of the motion and other pertinent matters of law involved in the motion. Until I know the Court's pleasure I hesitate to submit a brief.

Thanking you for whatever information you can send me, I am,

Sincerely,
/s/ Alex J. Raineri
Alex J. Raineri
502 6th Ave. N.
Hurley, Wisconsin 54534

IN THE

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

No. 81-1394

UNITED STATES OF AMERICA,
Plaintiff Appelee,
vs.
ALEX J. RAINERI
Defendant Appelant

The defendant moves the above named court for an order vacating the three Judge Panel of justices decision affirming judgment of conviction and for an order of recusal of one of the panel justices, namely Justice Thomas E. Fairchild in the above matter for the reasons stated below.

That the decision to affirm the judgment of conviction of the abovenamed defendant was written by Justice Thomas E. Fairchild, who at the time was biased and prejudiced against this defendant personally as well as against the locality which is the venue of the crime. That this prejudice denied the defendant a fair and impartial appeal hearing. The factual reasons for this motion are contained in the attached affidavit.

The decision affirming the judgement of conviction of the District Court and the jury verdict of guilty on all five counts was rendered in the Western District of Wisconsin, Barbara Crabb, presiding.

Included on this motion is a request for a hearing of the issues herein by an independent panel of Justices other than the panel that heard the appeal. They are Justices Fairchild, Cummings and Pell.

That this motion is based upon 28 USC 144, 455 (a) and (b) (1); as well as upon amendments 5, 6 and 14 of the United States Constitution.

The defendant appellant is presently under a jail

sentence on counts 4 and 5 of the indictment and an unpaid fine on counts 1, 2 and 3 of the indictment.

Dated This 22nd day of June, 1983.

/s/ Alex J. Raineri

Certificate of Good Faith

I hereby affirm that the foregoing affidavit and the motion attached is made in good faith and sincerely and seriously. That the information contained is based upon facts known to the undersigned and that nothing false or frivolous is intended.

/s/ Alex J. Raineri

United States Court of Appeals
Seventh Circuit

United States of America — No. 81 1394
Plaintiff-Appellee
v.
Alex J. Raineri,
Defendant-Appellant.

AFFIDAVIT OF ALEX J. RAINERI.

Alex J. Raineri, being first duly sworn on oath deposes and says:

Affiant is the defendant-appellant in the above entitled action and makes this affidavit in support of his motion. Affiant acts in pro se because he no longer retains any attorneys in his case. This motion is for an order vacating the decision written by Justice Thomas E. Fairchild as a member of a three justice panel including Justices Pell and Cummings, each concurring. Affiant asserts that he was denied a fair and impartial appeal due to the bias and prejudice of Justice Fairchild against this defendant and the locality in which the crime is alleged to have occurred in the indictment.

Defendant appealed from a five count conviction for violation of 18 USC 1952 (a) (3) (b) and (2). party to a crime, aiding and abetting; and count (4) Perjury and count (5) obstructing justice.

The date for argument was set for September 15, 1981. Defendant did not know until time for argument on that day who the Justices were to comprise the appeal panel. Defendant told his attorney at the time that he feared prejudice from Justice Fairchild and why.

On the day of the appeal hearing defendant appeared with his attorney at the Court of Appeals in Chicago before a panel of three Justices, namely: Fairchild, Pell and Cummings.

Defendant's last contact with Justice Thomas E. Fairchild was in the years 1945 through 1948. Justice Fairchild was an attorney in the firm of Miller, Mack and Fairchild of Milwaukee, Wisconsin. This firm was special

advisory counsel to the then Governor of Wisconsin, Elmer Goodland. This law firm represented by Justice Fairchild was advising Governor Goodland with reference to the Wisconsin Anti Gambling Bill drafted and promoted by Governor Goodland in the Wisconsin Legislature. Defendant was an assemblyman representing Iron and Vilas Counties at the time. Both counties had extensive gambling activities. Especially Iron County in which was located the notorious city of Hurley, often called "sin city" in the press. It was a bustling mining and lumbering town reputed for it's gambling and prostitution.

Defendant opposed the gambling bill as that appeared to be in the interests of his district. At a John Doe hearing the presiding Judge commented that he could see no other choice for a legislator from this district but to oppose the gambling bill.

The gambling bill during it's passage drew extremely heavy publicity from newspapers in Wisconsin and Illinois.

In one newspaper, the Appleton Post Crescent on February 8, 1945, it said this legislation as offered bears the name of Assemblyman Thompson, but it was conceived and written by Governor Goodland and will have his support.

It was none other than Justice Fairchild who drafted the law for Governor Goodland.

The Green Bay Press Gazette on February 10, 1945 it was stated that the Gambling Bill was drafted by Governor Goodland and his advisors. Justice Fairchild was one of the chief advisors to Governor Goodland. The article further stated that Assemblyman Raineri, defendant, who hails from Iron County where gambling is not exactly unknown opposed the gambling bill.

An article in the Capital Times of Madison, Wis., on February 16, 1945 stated that the opposition to the gambling bill is operated by the Walter Fisher-Alex Raineri (defendant) axis. Assemblyman Raineri comes

from Hurley (situs of the crime in this case) which is the Babylon of Northern Wisconsin where you have to push the girls out of the way to get at the slot machines and gaming tables.

The Milwaukee Journal on February 12, 1945 stated that Governor Goodland was putting the force of his office behind the gambling bill.

The Wisconsin State Journal, Madison, stated that Governor Goodland declared that tactics used by Hitler dominated Gestapo are being employed by the anti gambling bill enemies.

It took six months of debate before the gambling bill passed both houses. After passage a John Doe investigation was started to search for a conspiracy on the part of the opponents of the gambling bill. It was stated that illegal means were used to oppose the bill. The John Doe was motivated by a charge by the Governor's office that the gambling interests had raised 100,000 dollars to influence legislators to defeat the bill.

Justice Fairchild, then advising the Governor and this Defendant had heated personal arguments over the merits of the bill and it's affect on Northern Wisconsin and defendants district. The heated arguments resulted in each party threatening to cause harmful exposure, political damage, financial damage and criminal prosecution. At the time Justice Fairchild was the leading candidate for appointment to a vacancy due in the Supreme Court of Wisconsin. Defendant vigorously opposed his appointment resulting in the appointment of the then Attorney General to the post. Justice Fairchild was then favored for appointment to the vacant Attorney General's office and this was also opposed by defendant. It was only after Justice Fairchild was elected to the office that his appointment was fulfilled. That was also opposed.

Defendant at the same time left the legislature and was elected to the office of District Attorney of Iron County. That resulted in more contact with Attorney General

Fairchild and further bitter arguments and personal threats of political harm and statements that the defendant would wind up in jail yet. This continued over a two year period.

In the ten years following, defendant engaged in private law practice in the City of Hurley. A large part of which was in criminal law defending many cases involving the State of Wisconsin Attorney General's office and state law enforcement concentrating on the City of Hurley.

Federal case law authorized in a recusal motion a showing of bias on the part of a Judge prejudicial fact finding in his decision toward a defendant.

Justice Fairchild's opinion contains fact finding not supported by the evidence reflecting serious prejudicial conclusions to wit:

A) On the issue of location of trial Justice Fairchild found that the convenience of the court in holding 90% of it's cases in the Madison division of the Western District of Wisconsin some 300 miles south of the situs of the crime and residence of the defendant as well as the residence of 80% of the defendant's witnesses was of paramount reason under Rule 18 Federal Rules of Criminal Procedure. The rule states convenience of defendant and his witnesses with due consideration to the administration of justice is paramount to the convenience of the Court.

B) Justice Fairchild found as fact that the Superior court house was dismantled at the time the trial of this case was set for August 29, 1981. In fact the district court Judge at Madison, Barbara Crabb did not issue her order to dismantle the courthouse until after that date. The place of trial was set for Madison when the courthouse in Superior, Wisconsin was intact and only 100 miles from defendant's home and the location of the crime as well as the division in which the crime did allegedly occur. Obviously the dismantling of the Superior court room was ordered to defeat the defendant's motion for trial at

Superior then pending before the court. Also it was one of the reasons for the postponement of the trial that did not state any reason for the delay.

C) Justice Fairchild found no speedy trial violation notwithstanding obvious calendar date over run by some 70 days and he found the reason to be that the magistrate had not completed pending motions. All pending motions had been decided prior to the August 29th trial date and it was only after postponement of that date by the Court without reason that additional motions were made by the defendant and had to be decided. Defendant could not have made additional motions under the court trial date order and it was only because of the hanging in limbo that prompted changes and additional motions, during the postponed period.

D) Justice Fairchild found that the defendant was not entitled to the medical reports of Chief Govt. Witness Gasbarri nor was he entitled to a psychiatric because they were not necessary or important to the defense. The trial Judge stated in her opinion the medical report was material and that the mental condition of the witness Gasbarri was crucial to the defendant's interest. See R-p. 723. The reason given for denial of medical records during the trial was because the defense attorneys were not timely in making the request for them. See R-p. 5, 469, 483, 494, 692, 693. Justice Fairchild also found witness Gasbarri to be fully corroborated in her testimony by other evidence which is not true because she testified about her business records which she burned herself and the remainder burned in the fire destroying her building.

E) The appeal court decision found that while a privilege did not exist to the use of medical reports of Government's Star witness Gasbarri, trial court did not abuse it's discretion when it denied the use of the medical reports on trial. Justice Fairchild found that the defendant did not renew his motion to use the medical reports after the California mental institution doctors testified and for that reason defendant failed to protect

himself. This was not true because at the last attempt to use the medical reports, trial Judge Crabb ordered defendant not to raise the issue of medical reports again under penalty of contempt.

F) The appeals court decision found that while defense counsel did commit errors, they were satisfactory overall in defendants trial when the failures were crucial and numerous plain error:

1. Defense counsel failed to obtain medical reports when they were told how and when to do so by the Magistrate and by the defendant.
2. Refused to test the competency of the star government witness Gasbarri after being asked to do so by defendant.
3. Failed to properly move for a stay of proceedings to test the issue of location of trial.
4. Permitted without objection the use of an instruction to the jury that relates to a conspiracy charge when defendant was charged only with party to a crime, aiding and abetting. The two instructions contradict each other.
5. Permitted without objection, two different instructions related to defendant's knowledge of travel interstate of a check that contained different burdens of proof, one instructions informed the jury that knowledge on the part of the defendant was unneccessary as to travel to find him guilty and the other instruction on aiding and abetting informed the jury that the defendant had to knowingly aid in the commission of the offense and must participate in it.
6. Failed to properly move for a stay of proceedings to decide issue of jury selection.
7. Failed to object to use of burned records by accountant witness for the government, which records were non existent at trial so that defendant had no confrontation as to those records. Defendant is charged with having made those records and with having taken funds from the business that said records supposedly revealed.
8. Appeals court decision found counsel for the defendant effective when the trial judge stated in the record that

defense counsel were totally ineffective, disorganized and irrational in their presentation of defendant's case. Sentencing R-p. 10.

9. Failed to respond to trial Judge's request for exparte showing of need to re-call govt. witness on part of defense after claiming such information existed.

G. Appeals court decision found that defense had no right to argue to jury the tainted witness issue where govt. witness was released from jail on a 5 count Heroin felony sale charge and reduced charge of one misdemeanor and small fine substitued in return for her testimony against defendant. In addition the U.S. Attorney wrote to local authorities for immunity for the witness and asked leniency also. The same witness was during trial stipulated to be a perjurer by the govt. and defense in her trial testimony.

H. Travel Act Violation

The appeals court decision holds that the govt. must prove the following elements to convict:

a. Defendant had intent to promote a business involving an illegal enterprise.

b. Caused use of an interstate facility.

c. THEREAFTER promoted or attempted to promote the business enterprise.

d. Omitted by the decision was the necessary element of interstate character of the business. In other words travel alone was not enough.

I. In addition the appeals court decision forgot to find that if travel did exist the crime must flow from the travel and for certain, after the travel. R-pp1007-instructions. In counts one and two the checks in question traveled after the fact. In count one the check paid the dancer her salary after she performed and if prostitution was coupled with her performance that too had been committed prior to delivery of the check. There is no claim by the govt. that the evidence shows defendant was involved with any

other checks or that any other checks traveled interstate.

The same situation exists for the check in count two. The check in count two is to a power company and the power is delivered and metered and used prior to payment. So if the power was used in the crime it was all over prior to payment by check and the interstate travel. Justice Fairchild found as the Chicago Sun stated was ingenious when he said the power lighted the bar room, played the juke box for the dancers, lighted the rooms and cooled the champagne.

All of this he said promoted the illegal business, but the Sun Times article noted "who drinks warm champagne". Nor did the Fairchild decision consider the connection between the checks, bank account and proceeds of an illegal business. All other check travel cases found that the checks involved proceeds of the illegal business or that the check acted to promote the crime prior to commission.

Then comes count three the linen that traveled interstate. All of the evidence shows the linen was purchased from J.C. Penney and a Ben Franklin store. No proof exists of the use of any interstate linen. He also found in his appeals decision that James Vitich who operated the business later used the interstate linen when the evidence shows that Vitich ordered American Linen to cease proof that any interstate linen was used in the illegal been well taught his lesson in U.S. vs. Vitich a Western District of Wisconsin case involving him. So without any business the Fairchild opinion found that regular use of out of state bank account, and the use of linen were significant factors facilitating the enterprise. The record shows that the U.S. Attorney in his argument to the jury conceded that no interstate linen was used so he argued that the J.C. Penney and Ben Franklin linen were sent across state lines to be cleaned by American Linen. American Linen is a rental agency and not a cleaning agency, as testified by its manager.

Count four involves false declarations. The law says that false declarations must be material to the crime. The appeals court decision found the perjury material and misleading to the Grand Jury. Again the perjury relates to a period of time when the business enterprise involved here was under the management of James Vitich who divorced himself from all interstate connections that the business may have had. He learned that from his own case U.S. vs. Vitich and the evidence shows he fired all employees, did his own banking, and removed American Linen. There was nothing but a local business remaining and Federal Grand Juries have no jurisdiction over local matters. So any statement relating to a local business by a witness however false is immaterial to the powers and duties of a Federal Grand Jury. All of this was well known to the U.S. Atty. who inserted the issue to inflame both the Grand Jury and trial jury against the defendant. Especially since defendant was a Judge and Judges are always sworn to the truth. On this same perjury issue Justice Fairchild found that defendant associated with the female operator of the show bar business for 3 weeks in Reno, Nevada without benefit of any witnesses except the female and a friend who saw her once. No motel records, registrations or employee corroborated the evidence or findings. Oh yes, one motel record showed two people in defendants room the first night and 0 people the second night at a single rate. The record shows that defendant stayed at the Capri motel the first two days and female showbar operator says she stayed at Holiday Inn those days yet the findings on appeal are that defendant and operator were together at the Capri.

Count Five threatening a witness according to the fact finding by Justice Fairchild shows that defendant knew witness was going to testify to the Grand Jury at the time of the threat; that the prospective witness was frightened so she had herself wired for sound and went back a second time to pick up the threats more clearly, and that

all of the threats were soley the acts of the defendant when the actor who did the threatening had done so six months earlier for his own motives that were political. Justice Fairchild upheld the trial court in its finding that it was immaterial whether or not the defendant knew that the witness was to appear before the Grand Jury prior to the threat. See R page 42. There was no evidence that defendant knew.

The appeals court decision found as fact that defendant urged the owner of the showbar to return to Hurley and operated an illegal enterprise. The evidence shows that the owner operated the show bar for 20 years with her husband as an illegal enterprise. The decision found that the defendant aided and abetted one who knew more about illegal operation than the aider and abetter. An aider and abetter is one who contributes some skill or know how in the criminal activity to complete the crime or make it easier to do so. There is no evidence other than defendant urged one who already was experienced and skilled in the criminal operation, but no evidence to indicate defendant knew how to engage in the criminal activity. In fact none of the prostitutes had any contact with or even knew the defendant to a degree that was business related or even socially related.

The decision further finds that defendant paid the owner of the business $50.00 per night to work in her business when the record shows the owner said she had her own salary from the business. R pages 34 and 69. Also that Gasbarri as owner did not listen to Raineri, R at page 57. Another finding was that defendant hired and fired employees. The record shows that one bartender was told my a male voice unknown, to meet the owner for employment interview. The owner said the male voice was defendant who called bartender. The bartender said she called the owner's number and a male voice answered. The only other evidence related to hiring and firing was that defendant was supposed to have told one Bernice

DiGiorgio and employee to dump anyone engaging in prostitution. That was denied by DiGiorgio. The business had engaged hundreds of employees in the years of 1976 through 1979 when it ceased operation.

The Fairchild opinion find as fact that defendant engaged in operating the business. The evidence shows that the witness Gasbarri stated she went to Albert Stella for help on the liquor license. Other than notarizing, giving legal advice on liquor licenses, unemployment claims, and social security deductions defendant did not engage in any of the business activity. The writing on checks was performed by more than 20 people and it was because owner of the business could not spell, R. at pages 37, 38 and 70. The opinion further supports the trial judge in finding that Defendant was a Judge and committed illegal judicial acts that people in his district need not put up with. Nothing in the record shows that defendant acted improperly as a Judge. There is the findings that defendent would have committed a wrong if he had the opportunity. The foreseeability of the District Court and Appeals court is amazing. The appeals court found that defendant retained proceeds of the business. The record page 68 where owner says she deposited all of the money from the business. The opinion found that prostitution permeated the business when the record shows page 316 that all conversations relating to anything illegal were intended to and did take place after hours on the persons own time and no indication as to where. All of the conversational evidence was hearsay and was admitted not to prove the truth of the matter asserted contrary to the findings in the appeal opinion.

The appeal decision further found that defendant did the books for the showbar. All of the books and records were destroyed by fire and except for some bank records a determination as to the person who did the books could not be made.

/s/ Alex J. Raineri

Subscribed and sworn to before me
this 22 day of June, 1983.

/s/ Gregory L. Moffat
Notary Public, Salt Lake County, State Of Utah
(seal)
Gregory L. Moffat
Notary Public
State of Utah

United States Court of Appeals
For the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

Thomas J. Strubbe
Clerk

6 July 1983
Case #81-1394

Alex J. Raineri
502 6th Ave. North
Hurley, WI 54534

Mr. Rainieri

I am returning the enclosed documents and check to you. The mandate in your case issued on 3/24/82, and the Supreme Court denied your petition for certiorari on 12/2/83. Hence your case is long closed in this court. This office cannot accept any filings in this case unless you file a motion to recall the mandate, and it is granted. While the chances of this motion being granted are slim, if you wish to file such a motion, you must file an original and three copies plus a proof of service on your opponent.

If this office can be of further service, please feel free to write me at the address above.

s/s Charles R. Rea
Charles R. Rea
Deputy Clerk

June 9, 1983

Deputy Clerk
Court of Appeals
7th Circuit
Chicago, Illinois.

Re: US. vs. Alex Raineri Case No. 1394

Dear Sir:

Thank you for your letter relating to the filing of a recusal motion in the above matter.

I do not understand your demand for a motion for the mandate of the record back to the Court of Appeals from the Circuit or district court.

This is not a certiorari in any respect. It is a distinct and separate motion for recusal. It is based solely on the affidavit attached to the motion. If the motion is granted because the affidavit is found to be sufficient then the next step is to mandate the record back to the court for the resulting action caused by the finding that the motion should be granted. Why the record should be returned at this time is premature. What if the affidavit is found to be insufficient, then of course there would be no need for the record or further action.

The issue is whether or not the Justice who wrote the appeal decision was biased and prejudiced and if so it denied the defendant a trial by a fair and impartial tribunal thus denying him his constitutional right to a fair trial.

The Justice involved who was notified of this action wrote a letter and stated that he would not sit on the motion and that he believed the matter would be heard before three Justices who were not involved in the matter.

Your denial of my right to file this motion is denying my civil rights.

I wish you would notify me to return the documents for filing in response to this letter.

I can then avoid the necessity of filing a petition for a writ of mandamus and possibly further action for civil rights violations.

Sincerely yours,
/s/ Alex J. Raineri
Alex J. Raineri
502 6th Ave. N.
Hurley, Wis. 54534

7-29-83

United States Court of Appeals
7th Circuit.
219 S. Dearborn St.
Chicago, Illinois 60604
To: The Office of Clerk of Court.

Enclosed please find Original and three copies of petition for Writ of Mandamus for filing.

Please advise of action by the court.

Also enclosed find check for fees, the sum to be inserted.

Sincerely,
/s/ Alex J. Raineri
Alex J. Raineri
502 6th Ave. N.
Hurley, Wis. 54534

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Alex Raineri
Petitioner

vs.

Thomas F. Strubbe, Clerk of Court of Appeals
7th Circuit, and Charles R. Rea, Deputy Clerk
Respondents

APPLICATION FOR WRIT OF MANDAMUS

Petitioner moves the court for writ of mandamus for the following reasons:

1. On June 28, 1983 petitioner filed a motion for recusal against three justices, Fairchild, Cummings and Pell, all of the above court along with affidavit stating facts for recusal.

2. THAT the motion was based upon sections 28 USC 144, 455 (a) and (b) (1); as well as upon amendments 5, 6 and 14 of the United States constitution.

3. That the affidavit attached to the motion states as fact that petition is subject to a jail sentence and two counts and a fine on three counts at this time.

4. That the petitioner appealed his conviction on all counts to the Court of Appeals 7th Circuit and the decision affirming the convictions was written by Justice Fairchild and concurred in by Justices Cummings and Pell.

5. That a petition for enbanc hearing was applied for and denied by all of the said Justices.

6. That an appeal was taken to the Supreme Court where certiorari was denied.

7. That the motion for recusal with supporting affidavits is based upon denial of the petitioners constitutional rights and abuse of discretion.

8. That the respondents above named refused to file petitioners motion solely on the grounds that the case no. 81-1394 by reason of the Supreme Court action was long

closed in this court and the clerks office would not accept the filing of the motion unless a motion was first made to recall the mandate in this case made on 3-4-82 was first made and granted by the Court. Also, that said motion to recall the mandate in this case must be served upon petitioner's opponent. All reasons notwithstanding that the motion is addressed to the Justices involved and based only on the supporting affidavit.

9. That petitioner is unable to claim his constitutional rights without this writ and has no other remedy.

Your petitioner therefore requests that a writ of mandamus be issued out and under the seal of the above court, directed to said respondents commanding them to permit the filing of the motion for recusal along with supporting documents.

/s/ Alex Raineri

State of Wisconsin
County of Iron.

Alex Raineri, being first duly sworn, deposes and says that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true to his own knowledge.

/s/ Alex Raineri

subscribed and sworn to before me
this 29th day of July, 1983.
Patricia F. Stever
Notary Public, Iron County, Wis.
Commission expires: 7-14-85
(seal)

U.S. Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
October 17, 1983
Before
Hon. William J. Bauer, Circuit Judge
Hon. Harlington Wood, Jr., Circuit Judge
Hon. Richard D. Cudahy, Circuit Judge

Alex Raineri,
Petitioner,
NO. 83-2456
vs.
Thomas F. Strubbe,
Clerk of the Court of Appeals,
7th Circuit and
Charles R. Rea, Deputy Clerk,
Respondents

} Petition For Writ Of Mandamus

This matter comes before the court for it's consideration to the undersigned and that nothing false or frivolous is intended.

The grounds alleged by appellant in his Application for Writ of Mandamus do not justify the issuance of the extraordinary writ of mandamus. Accordingly,
IT IS ORDERS that petitioner's application is hereby DENIED.

In the
United States Court of Appeals
Seventh Circuit
United States of America
Plaintiff Appellee,
No. 81-1394
vs.
Alex J. Raineri,
Defendant Appellant

The defendant herewith serves and files with the Honorable Justice Thomas E. Fairchild this motion for recusal of himself in the above entitled matter. The reasons therefore are stated below.

That the decision to affirm the judgement of conviction of the abovenamed defendant was written by Justice Thomas E. Fairchild, who at the time was biased and prejudiced against this defendant personally as well as against the locality which is the venue of the crime.

That this bias and prejudice denied the defendant a fair and impartial hearing by a fair and impartial tribunal of appeal. The factual reasons for this motion are contained in the attached affidavit.

That the bias and prejudice of the writer of the decision on appeal carried over and affected the remaining members of the appellate panel.

The decision affirming the judgement of conviction of the District Court and the jury verdict of guilty on all five counts was rendered in the Western District of Wisconsin, Barbara Crabb, presiding judge.

Included in this motion is a request that if this motion is to be heard other than by the Justice to whom the motion is made that it be by Justices other than any one of whom concurred in the appeal decision.

That this motion is based upon 28 USC 144, 455 (a) and (b) (1); as well as upon amendments 5, 6 and 14 of the United States Constitution.

The defendant is presently under a jail sentence on

counts 4 and 5 of the indictment and was subject to an unpaid fine as of the time he first filed this motion in August, 1983, which since has been paid.

Dated this 28th day of October, 1983.

/s/ Alex Raineri

CERTIFICATE OF GOOD FAITH

I hereby affirm that the foregoing affidavit and motion attached is made in good faith and sincerely and seriously. That the information contained is based upon facts known to the undersigned and that nothing false or frivolous is intended.

/s/ Alex Raineri

THE AFFIDAVIT OF June 22nd as appears in the first motion for recusal is the same affidavit as was attached to the motion presented to Justice Fairchild and should be attached to his motion but would be merely a duplication of the record. Reference is made by this information to the enclosed affidavit of June 22, 1983 the same as if attached hereto in full.

UNITED STATES COURTS OF APPEALS
For the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

Chambers of Thomas E. Fairchild
Senior Circuit Judge

November 2, 1983

Mr. Alex J. Raineri
502 Sixth Avenue, North
Hurley, Wisconsin 54534

Re: 81-1394 (USA v. Raineri)

Dear Mr. Raineri:

I acknowledge receipt of your letter dated October 28, 1983, accompanied by your motion that I recuse myself in Appeal No. 81-1394, and by your affidavit dated June 22, 1983.

Because the Judgement in No. 81-1394 is long since final, there is no proceeding from which I could now withdraw, and I therefore can only deny your request.

Sincerely,
/s/ Thomas E. Fairchild
Thomas E. Fairchild